

## BOOK REVIEWS

*Conservation of Water by Storage.* By George Fillmore Swain, Professor of Civil Engineering in Harvard University. Yale University Press, New Haven, Conn. 1915. pp. xx, 384.

There has never been published a more sane, illuminating or comprehensive presentation of the conservation problem, as applied to water power and water storage, than that of Professor Swain in his "Conservation of Water by Storage," just issued from the Yale University Press. While not beyond the range of the student class before whom these lectures were delivered,<sup>1</sup> they are a rich mine of information for the expert, whether he be engineer or lawyer; and they are for the layman as well. Though adapted to all classes of readers, it should be a text book in a course of instruction prescribed for every legislator and administrative official, not only of the federal government but of each of the state governments. Moreover, the mental attitude toward the subject of conservation, of those in public life to whom such a course ought to be prescribed, should be changed from the now too prevalent spirit of wrangling and indulgence in mere complaint of this or that statute, or of this or that theory of legislation, to an appreciation of the necessity of constructive, remedial measures. They should heed Bacon's motto, adopted by Professor Swain:

"Read not to contradict and confute, nor to believe and take for granted, nor to find talk and discourse, but to weigh and consider."

The present stagnation in water-power development in this country is met for the most part merely by outbursts of complaints,—complaints, on the one hand, because of the universally recognized fact that the present Federal Dam Acts are, as Professor Swain points out, "the great stumbling block" to water-power conservation in the United States, and, on the other hand, the captious complaints and misleading criticisms by pseudo-conservationists of any remedy, the proposal of which has some measure of regard for constitutional and business considerations. The present extravagant waste of water resources, perpetuated

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<sup>1</sup> This book comprises addresses delivered in the Chester S. Lyman Lecture Series before the Sheffield Scientific School of Yale University.

by the obstructionist tactics of those who, in discussing remedies, confound conservation with confiscation, reminds one of Mark Twain's saying about the weather: "We all complain about the weather, but nothing is done."

The first five chapters of this book are addressed, not only to the engineer, but primarily to the lawyer and the legislator. They deal with the subject of conservation of water powers, as affected by present and proposed legislation, federal and state. Conservation is aptly defined as "wise use and the avoidance of waste." With respect to water power, waste is demonstrated to mean non-use. Use, then, is of the essence of conservation. The respective rights of the individual riparian owners, of the states and of the federal government, are clearly distinguished. The federal power is a limited delegated power solely to protect commerce, that is, navigation; all other rights remaining in the states or in the citizens thereof, according to the property law of the respective states. The ultra-federal-control view is shown to be without authority and to be based upon no right, except that of legislative brute force; which is, as Professor Swain says, the might of the bandit extorting "tribute as the price of life." So it is, when the Congress withholds its consent to the construction of a power dam for any purpose or under any restriction or condition other than that which is necessary to protect navigation.

After discussing other legislative water-power problems, Professor Swain treats (Chapter V) of water powers on the public domain and of the present legislative obstacles to the conservation of such water powers. In this phase of the subject he assumes, as some of the authorities whom he cites have too much assumed, that public-domain water powers are within states recognizing the law of riparian rights. So far as such assumption is justified, the conclusions stated are correct; for, in such cases, the federal government would hold the position and rights of a riparian owner at common law and could deal with such rights as such riparian owner, in addition to exercising also its sovereign right of control of navigation. But in the states where most of the public domain is situated, the riparian common law rights are not a part of the property law of the state. On the contrary, rights of use are there governed by the law of state ownership or of state control. No greater or different right would belong to the federal government because it owned a riparian tract than would belong to any other riparian owner in the state in question. Where no riparian-right law existed, the

right of the federal government would be confined to its limited power of protection of navigation. For these reasons, it seems rightly claimed that the pending federal measure for the control of water powers upon the public domain encroaches, in most instances of its application, upon the rights of the states. The latter, therefore, protest, not only through their representatives in Congress<sup>2</sup> but also through their legislatures.<sup>3</sup>

The more technical aspects of water conservation by storage, presented in the remaining chapters, are treated primarily from the viewpoint of the engineer but in a manner intelligible to the non-expert. Regularity of stream flow may be promoted by surface reservoirs and by forestry and tillage. Here conservation means the saving from waste caused not only by excess runoff but also by damage from floods.

Copious appendices contain reference matter which has been selected with great care; and there is added a list of bibliographical references for each chapter, useful for those who wish to pursue the subject further. The book is richly illustrated and its typographical excellence is deserved by the exceptionally attractive and admirable presentation by the author of its subject matter.

ROME G. BROWN.

MINNEAPOLIS, MINN.

*Railroad Rate Regulation.* By Bruce Wyman. Published by Baker, Voorhis & Co., New York City. 1915. pp. XCVI, 1210.

This book is a second edition of a work by Professor Joseph H. Beale and the present author which appeared in 1906. Since that time there has been a very great development in the law on this subject, due to both legislation and judicial decision. Much of the present work is based upon the opinions of the Interstate Commerce Commission during the last eight years. A great deal of this book therefore, though it purports to be but a second edition of an earlier work, is entirely new.

Appreciating the fact that, in order to evaluate former decisions and rulings, it is necessary for a lawyer to have clearly in mind

<sup>2</sup> See Minority Report from Committee on Public Lands, February 2, 1915, accompanying H. R. 16673—Report 898, Part 2—63d Congress, 3d Session.

<sup>3</sup> See recent memorial to the Congress by Colorado State Legislature against H. R. 16673, the Public Domain Water-Power Leasing Bill, proposed by the Secretary of the Interior.

the powers which the Commission had when a ruling was made, the author had devoted the early part of his work to the story of the rise of the Commission by the successive amendments which have been made to the original act. About one-third of the original work, which was devoted to an exposition of the fundamental obligations of public employment and common carriers in particular, has been omitted in this work, it having been included in the author's general treatise on Public Service Companies. The subjects of Rates and Discriminations, treated separately in the first edition, are here subjected to a single analysis of the problems involved. Fundamental chapters of the first edition, such as those dealing with Classification of Goods, Discrimination between Localities, Schedule of Rates, and Investigations of the Commission, have not been structurally changed but have been elaborated and notable additions made in the number of cases cited. The treatment, in the present work, upon the Functions of the Commission and its jurisdiction over joint rates is entirely new matter, being based entirely upon decisions rendered since 1906 where the Commission has exercised the important powers conferred on it by the Amendments of 1906 and 1910. The opposing theories of rate regulation receive separate treatment. The policies of basing schedules on original cost of plant or upon its present value are discussed, as is also the question as to whether a particular rate to be charged for a given service should be based upon its cost or value, the author favoring the former. The matter of practice before the Commission is ably treated in a lengthy chapter in which all the cases have been collected. The final chapter is devoted to subsequent proceedings before the courts where the action of the Commission has been brought up. In the appendix appear, in addition to the statutory provisions, the rules of practice together with forms of pleading, both before the Commission and the courts, which have stood the test of litigation.

The conceded position which the author of this work has for sometime held as one of the very first authorities in this country upon the general law of Public Service Corporations makes any expression of opinion by the reviewer as to the excellence of the work superfluous. The author's name practically stands for the last word in this field of the law, if any one except the courts may be considered as speaking authoritatively. We heartily commend the book to our readers.

H. W. A.

*Probate Law and Practice of Connecticut.* By Livingston W. Cleaveland, Harrison Hewitt and Charles Edward Clark, of the New Haven Bar. Banks Law Publishing Company, New York City. 1915. pp. LXVIII, 1098.

Mr. Cleaveland, formerly Judge of Probate of the District of New Haven, assisted by Messrs. Hewitt and Clark, have rendered a valuable service to the members of the Bar and Probate Judges of Connecticut by the preparation of this book, the more praiseworthy, because a work of its thoroughness and extent must, in a small state like Connecticut, have been undertaken without hope of reward other than that of benefiting their profession and the state. Prior to publication of the book under consideration, there have been two publications on Connecticut Probate Law, the more considerable of which was by Nobbs & Stevenson of Bridgeport, in 1905. This was a valuable and extensively used work. Much has happened in the development of Probate Law in the last ten years, and the present work has been brought down to date, including a large part of Volume 88 of the Connecticut Reports. Although containing over a thousand pages, the statutes are sparingly reprinted and the citation of other than Connecticut authorities is limited. A few leading textbooks are cited. The extent of the body of Probate Law is shown by the fact that approximately two thousand cases are cited from our reports, this being from one-sixth to one-seventh of the entire number of cases reported on all subjects.

This work will be of immediate and great practical value to all interested in probate law, and the one hundred and fifty-three forms printed in the appendix will be of much use. There is also printed in the appendix an essay by Judge Cleaveland on the history of the Origin of Connecticut Probate Jurisdiction, and of some of our probate doctrines, showing much research. The discussion of the various subjects is full but not redundant, and, so far as can be determined without actual use, is as exhaustive and accurate as the present state of our law will allow.

We congratulate the authors on doing a valuable piece of work which cannot fail to be of constant use to the bench and bar of our state. And its value for use in this state is greatly emphasized by the fact that its scope is practically limited to our own law and does not involve the liability to error always likely to occur when our law must be selected from a treatise covering the law of the several states. While such treatises are important

when some obscure or undetermined point is under investigation, in the great majority of instances arising in daily practice, a local hand book like this is quite sufficient.

This book has made easily available all our law upon the subject as determined to date.

E. B. GAGER.

*Restrictions on the Use of Real Property.* By C. P. Berry. Published by George I. Jones, St. Louis, Mo. 1915. pp. XLV, 657.

A great many law books which are being published nowadays and which purport to be text-books are in reality not much more than digests of the law on the subject to which they relate. The book in question is of this kind. It is a digest of the law relating to restrictions on the use of real property. But it would hardly be fair to the author to say that he claims to have written a text-book. In his preface he says that he has made special effort to produce "a practical working tool for the busy lawyer." This might mean either a text-book or a digest and the book in hand is essentially a digest.

It does not follow from this, however, that the author has not rendered a valuable service to the legal profession. The phase of the law which he has chosen is one of growing importance and will become more and more important with the increase in population and its incident necessity of crowding larger and larger numbers of people into given territorial areas.

The author has covered his field well. He has not confined himself to the American cases, but has included the Canadian, English, Irish and Scotch cases as well. The excellence of his index makes the material included easily and readily accessible. Half a dozen different words or expressions in the index will often conduct you to the case on the question in hand. The book should prove of very great value to every lawyer who has a real estate practice.

H. W. A.

*The Doctrine of Intervention.* By Henry G. Hodges. The Banner Press, Princeton. 1915. pp. 288.

This is a useful summary of a subject much in evidence in public thought and the author may be congratulated on having chosen for his work a branch of international study which has

hitherto only received partial treatment in the leading works on international law. In the appendices we have useful documents touching neutrality and an excellent bibliography of the subject. While our author's view is comprehensive we could have wished at this time greater detail in his treatment. This is especially true when he comes to "Balance of Power." Occasionally a statement would seem to need modification; we would hardly indorse, without qualification, the statement (at p. 29) "The Holy Alliance received its first great blow by the promulgation of the Monroe Doctrine in 1823." Our author's review of recent war-like conditions is most helpful and illuminating, and we cordially commend the volume to all students of public affairs.

G. E. S.

*Sales of Stocks and Bonds.* By Milford J. Thompson. T. H. Flood & Company, Chicago. 1915. pp. XXV, 208.

This book deals with an intensely live topic. The author startles one by the initial statement in his introduction that "there is a universal violation of the law of sales in the present methods of delivering shares of stock." His attempt is to make good this thesis and to indicate how such sales and contracts of sale should be made in order to conform to the fundamental principles of the law of sales. His treatment of the subject is suggestive, but is somewhat lacking in clearness in places and is not always entirely convincing. Very few cases are cited and we are unable to see why the author concluded that the citation of more authorities would not have added to the strength of his book. The book will be interesting and valuable chiefly by way of suggestion rather than because of any definite solution which it gives of the problems pointed out.

H. W. A.

*The Act to Regulate Commerce.* By Herbert C. Lust. Published by LaSalle Extension University, Chicago. 1915. pp. VII, 196 and 141.

This book contains an appendix of 141 pages which includes the text of the Interstate Commerce Act with the amendments to date. The body of the book consists of a section by section comment upon the Act. On the whole, it is a fair general expo-

sition of the Act in its fundamental aspects. It will be useful to the student who seeks a general knowledge of the Act, but, owing to the fact that very few authorities are cited, it will not be very useful to the practicing lawyer.

H. W. A.

*History of Social Legislation in Iowa.* By John E. Briggs. Published by The State Historical Society of Iowa, Iowa City. 1915. pp. XII, 444.

*Poor Relief Legislation in Iowa.* By John L. Gillin. Published by The State Historical Society of Iowa, Iowa City. 1914. pp. XIV, 404.

*The Law of Carriers of Goods.* By Ralph Merriam. Published by LaSalle Extension University, Chicago. 1914. pp. IX, 179.

*War Obviated by an International Police.* A Series of Essays Written in Various Countries. Translated and published by Martinus Nijhoff, The Hague. 1915. pp. IV, 223.

*National Tax Association.* Proceedings of the Eighth Annual Conference. Madison, Wis. Published by the National Tax Association. 1915. pp. 499.

*American Bar Association.* Report of the Thirty-Seventh Annual Meeting of the American Bar Association held at Washington, D. C. Lord Baltimore Press, Baltimore. 1914. pp. 1170.